

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code Part 140. (This is a GIL.)

December 19, 2003

Dear X:

This letter is in response to your letter dated October 1, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Our recently acquired subsidiary, ABC, requires guidance or tax advice related to the following:

1. Are the services ABC provides considered 'tangible personal property'?
2. If yes, would the nature of the services fall under an exemption to the general sales and use tax guidelines in the State of Illinois?
3. Would ABC be required to collect sales tax on orders to customers within the State assuming:
 - a. ABC does not have a presence or permanent establishment in the State?
 - b. ABC establishes a presence or permanent establishment in the State?

Nature of the Service

ABC provides 'same-day' country intelligence analysis and continuously updated detailed reports on 186 countries around the globe, with a unique capability to provide near real-time analysis of breaking news. Coverage includes economic, business, legal and regulatory information, together with proprietary economic and political risk assessments. ABC also provides in-depth coverage of the automotive, energy, healthcare and telecommunications industries, with 'same-day' analysis, competitive intelligence and global country-markets coverage. Products are 100% delivered through

ABC's customized real-time Internet publishing platform, hosted in LOCATION. There are no products delivered via mail or common carrier. All of the country and industry analysis services are subscription based, and the customer pays for the subscription annually in advance.

Nature of the Sales Efforts

Currently, ABC has a fifteen-person telemarketing sales force based in CITY/STATE. ABC does not contract directly with subscription customers. ABC arranges sales for its LOCATION-based parent, ABCD. This LOCATION entity invoices customers directly from the LOCATION, without sales tax in the case of USA-based customers. Based on these facts, it is fairly clear that the collection of sales tax is not necessary. However, now that XYZ owns ABC, we are considering changing the sales structure to allow ABC to contract with customers and invoice from STATE. A consideration as to whether we make this change is if this will require ABC to charge its customers a sales tax on its services, a cost that our customers currently do not pay.

I look forward to your timely response on this matter.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code Part 140 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon how the serviceman is classified. There are four ways that the tax can be calculated: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495, enclosed.

Pursuant to Section 495.100(a), "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of material used, labor or service cost or any other expense whatsoever.

Generally, persons that provide subscribers access to the Internet and who do not, as part of that service, charge customers for the line or other transmission charges which are used to obtain access to the Internet, are not considered to be telecommunications retailers. See 86 Ill. Adm. Code 495.100(d).

If you do not charge your customers for telecommunications, but merely assess an access charge for an on-line news service, Telecommunications Excise Tax would not be incurred. However, if you also charge your customers for telecommunications, you will need to disaggregate

the access charges from the telecommunications in your books and records. You would then remit Telecommunications Excise Tax based upon the gross charges for the telecommunications you sell. If you do not disaggregate the access charges from the telecommunications charges, Telecommunications Excise Tax is incurred on the entire amount.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.